

The General Prosecutor Unbound

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It is no secret that the rule of law in Bulgaria has been fragile for a long time, like in many other post-socialist states. Still, what has been going on in the last days in Bulgaria is extraordinary in a number of ways. It could be seen as an attack against the very constitutional foundations of the state. In this brief post, I will just focus on the last development concerning the disregard of the constitutional principle of the rule of law by one of the highest authorities in the state, namely the General Prosecutor.

This disregard was manifested on the morning of 9 July when representatives of the police and the Specialized Prosecution entered the building of the presidency carrying out searches of different offices in relation to [two pre-trial procedures](#). The legal affairs secretary of the President was arrested on charges of leaking of classified information and power abuse.

Art. 103 (4) of the [Constitution](#) postulates that no one shall initiate criminal prosecution against the president and the vice-president. The straightforward character of this provision embraces not just the figure of the President, but involves the work of the presidency as a whole; otherwise, this provision would be rendered meaningless. Thus, the constitutional protection is granted to the offices and the communication forming parts of the activity of the President. The raiding of the presidency by the armed police forces could be seen as act which directly goes against this constitutional rule, and thereby against the principle of the rule of law which is the very constitutional foundation of the country.

From „Only God is above me“ to „I am an instrument in the hands of God“

These two quotes come from two General Prosecutors (GP) in Bulgaria, respectively [by Ivan Tatarchev](#), who held the post between 1992 and 1999, and [by the currently acting GP, Ivan Geshev](#). The perceived connection to the divine that the two GPs mention might be based on the overwhelming power of the GP's authority in the state. To say that due to its prerogatives the GP possesses a considerable amount of power in the legal system would be an understatement. The prosecution system is highly centralized, empowering the GP to exercise binding authority over the work of every prosecutor or to take over any case with which the prosecution is engaged.

The GP's term of office is one of the longest in the country (7 years), and it is accountable to no-one. In case of a violation of the law by the GP, the GP would have to investigate himself. Currently two legal procedures exist to remove the GP from his position, [both of which are practically ineffective](#). According to Art. 175(5), 173 of the Law on the Judicial Power, the removal of the GP requires a decision of the Supreme Judicial Council on the basis of 17 votes out of 25. However, the

Council can only recognize an already established violation of the GP and the law falls short of proving actual procedure for determining whether such a violation exist. The second option is Art. 230(1) which regulates the temporary removal of magistrates. However, in the concrete case, this option is rather paradoxical since the GP is the one to propose prosecutors for the temporary dismissal to the Supreme Judicial Council.

The problems associated with excessive power of the GP are well known and have been discussed at length [not only in Bulgaria](#), but have also attracted the attention of [international scholars](#) and different international institutions, such as the Venice Commission and the Committee of Ministers of the Council of Europe. The latter recently issued a [highly critical resolution](#) on the lack of appropriate legislative efforts in dealing with the basically unaccountable status of the GP. In its resolution, the Council of Europe referred to Bulgaria's lack of progress in addressing the consequences of the [Kolevi v. Bulgaria](#) judgement. The horrifying factual background concerned the murder of a high-ranking prosecutor. The family of the deceased claimed that the GP at the time, who used to be in feud with the deceased, blocked all ways for the murder's investigation. The Court found that the Bulgarian authorities were in a violation of Article 2 (right to life) and Article 5 §§ 1, 3 and 4 (right to liberty and security). Among others, in para. 209 the Court considered "as plausible the applicants' assertion that, given the centralised structure of the Bulgarian prosecution system, based on subordination, its exclusive power to bring charges and the procedural and institutional rules allowing full control by the Chief Public Prosecutor over every investigation in the country, ... it was practically impossible to conduct an independent investigation into circumstances implicating him, even after the constitutional amendment allowing in theory the bringing of charges against him."

The Venice Commission has also recently underlined that Bulgaria has failed to address the ["virtual impossibility to investigate a case against the GP"](#). As a result of this conclusion, the government proposed [a new mechanism](#) where a specialized prosecutor belonging to the Supreme Cassation Prosecution Office will be able to investigate the GP in case of need. It is, however, doubtful that this proposal could improve the situation given that this newly created position would also be subordinated to the authority of the GP.

Prosecution vs. President

The ongoing collision between the prosecution authority and the institution of the President already has some history. When the current GP, Ivan Geshev, was nominated in the end of 2019 as the only candidate, President Rumen Radev [refused to sign his appointment](#). The rejection occurred amid social protests claiming that the proposed candidate was unfit for the role and was intending to serve as a protecting mechanism for the interest of the ruling government in the state. Ultimately, after Geshev was selected for a second time by the Supreme Judicial Council, the President signed the decree for his appointment.

Soon after Geshev commenced his duty, in January 2020 the prosecution released wire taps supposedly indicating the engagement of the President in criminal activities amounting to misuse of his authority. In addition, on the basis of the GP's prerogatives to request a binding interpretation of the [Constitution](#), the GP filed a request to the Constitutional Court about the president's immunity. The actions of GP seemed confusing, given that the Constitution clearly states that there may be no criminal proceedings against a president and vice-president. Therefore, the attempts to encroach on the presidential authority, including by wiretapping and carrying out investigations against him, could be interpreted as an attempt of silencing the President who is an outspoken critic of the ruling government.

The mentioned [raiding of the Presidency](#) took the feud to a whole new level. It occurred a day after the President made a public statement that the National Service of Protection (NSP) should not be providing tax-paid security protection beyond the highest-ranking officials listed in the law on the public security authority. It had been revealed before that the NSP was providing guards to a member of parliament belonging to the party Movement for Rights and Freedoms and to the honorary chairman of the same party, who does not hold any public position.

The President issued his statement after [three Bulgarian citizens were barred by NSP guards](#) from exercising their constitutional right of accessing a beach in the southern part of the Black Sea. The guards also committed an offence by refusing to authenticate themselves as NSP officials. The beach borders with a luxury estate which is supposedly occupied by the honorary chairman of the Movement for Rights and Freedoms to whom the NSP has been providing security services for years. After it was officially established that the guards securing the beach belong to a state institution, the President requested that the NSP must cease to provide state-funded guards to private individuals. On the next morning, the police and prosecutor officials raided the building of presidency. Interesting enough, the GP stated that he will not investigate the occupation of the beach and the reasons for the presence of the NSP guards.

When a state institution ceases to abide by the given constitutional order and even interferes with and threatens other institutions, such as the democratically legitimized authority of the president, this may not only lead to occasional disrespect of the law. It also might be a signal that this institutional is being transformed into an instrument of repression and even dictatorship.

